

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re CODY P. et al., Persons Coming
Under the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

D.P. et al.,

Defendants and Appellants.

D054733

(Super. Ct. No. EJ2365C-D)

APPEAL from a judgment of the Superior Court of San Diego County, Gary M. Bubis, Judge. Reversed and remanded with directions.

In October 2006 D.P. left her children, Cody P. and Samantha P., in a motel room with men who used drugs in their presence. D.P. refused to allow the children's older brother to call the police after one of the men assaulted him. D.P. also used illicit drugs and smoked marijuana in the children's presence. Based on these facts the San Diego County Health and Human Services Agency (the Agency) filed dependency petitions for

eight-year-old Cody and seven-year-old Samantha. The children were detained, and then placed in foster care. In early 2008 the children were moved to a prospective adoptive home where they remain.

D.P. and the children's father, Jon P., appeal the March 2009 judgment terminating their parental rights (Welf. & Inst. Code, § 366.26).¹ D.P. contends the adoptability finding is not supported by substantial evidence and the juvenile court erred by declining to apply the beneficial relationship exception to termination (§ 366.26, subd. (c)(1)(B)(i)). Jon contends the court erred by terminating his rights without a finding he was currently an unfit parent and that notice under the Indian Child Welfare Act (25 U.S.C. § 1901 et seq.) was defective. D.P. and Jon P. join in each other's contentions. The children's counsel joins in their request for reversal, contending a change in circumstances following the judgment has undermined the finding the children are likely to be adopted within a reasonable time.²

We requested a response from the Agency's counsel to the children's counsel's brief, including a discussion of Family Code section 8602 in light of the fact that Cody

¹ Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

² Counsel states the children wish to continue living in the prospective adoptive home with their foster parents but do not wish to be adopted. The foster parents are no longer willing to adopt because they believe it would be detrimental to the children's emotional well-being to force the issue. They remain committed to providing the children a permanent home and have not ruled out adoption if circumstances change. The children's counsel believes it would be devastating to the children if they were removed from this home.

will be 12 years old in January 2010. Counsel for D.P., counsel for Jon, the children's counsel, and counsel for the Agency filed a stipulation for reversal of the judgment, remand to the juvenile court for a new section 366.26 hearing with directions to order guardianship as the permanent plan, and immediate issuance of the remittitur. We accept the stipulation. (Code Civ. Proc., § 128, subd. (a)(8); *In re Rashad H.* (2000) 78 Cal.App.4th 376; Cal. Rules of Court, rule 8.272(c)(1).)

DISCUSSION

"An appellate court shall not reverse or vacate a duly entered judgment upon an agreement or stipulation of the parties unless the court finds both of the following: [¶] (A) There is no reasonable possibility that the interests of nonparties or the public will be adversely affected by the reversal. [¶] (B) The reasons of the parties for requesting reversal outweigh the erosion of public trust that may result from the nullification of a judgment and the risk that the availability of stipulated reversal will reduce the incentive for pretrial settlement." (Code Civ. Proc., § 128, subd. (a)(8).)

Our independent review of the record, summarized above, leads us to conclude we should accept the stipulation. First, there is no reasonable possibility that reversal will adversely affect the interests of nonparties or the public. The children's foster parents agree with the parties' stipulation and wish to become the children's guardians. Reversal will not adversely affect public interests. Second, the parties request reversal because they agree it is unlikely the children will be adopted within a reasonable time, and it is in the children's best interests to reverse the judgment in favor of a permanent plan of guardianship. Because accepting the stipulation will further the children's best interests,

the public trust will not be eroded. On the contrary, public trust will be advanced by knowing that the Agency, counsel and the courts will seek reasonable solutions in cases involving children. The parties' agreement will not lead to a risk of reducing any incentive for pretrial settlement. Finally, there is every indication that guardianship by the foster parents will remain the appropriate permanent plan in the short interval between the filing of this opinion and the hearing on remand. We therefore direct the juvenile court to order a new permanent plan of guardianship.

DISPOSITION

The judgment is reversed. The case is remanded to the juvenile court for a new section 366.26 hearing with directions to order a new permanent plan of guardianship. The remittitur is to issue forthwith.

McCONNELL, P. J.

WE CONCUR:

NARES, J.

HALLER, J.